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Nos. 77-991 and 77-5999

In the Supreme Court of the United States

OCTOBER TERM, 1978

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, APPELLANT

v.

GRACE AZNAVORIAN, ETC.

GRACE AZNAVORIAN, ETC., APPELLANTS

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF FOR THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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1. Appellees in No. 77-991 contend that Section 1611(f) establishes a "conclusive presumption" that an SSI beneficiary has abandoned his United States residence whenever he leaves the country for 30 consecutive days (Br. 6, 8, 13-14, 30, 41-44). This is an inaccurate characterization of the way in which Section 1611(f) operates.

One of the eligibility criteria for SSI assistance is long-term United States residence. See 42 U.S.C. (Supp. V) 1382c(a)(1)(B). Another is physical presence in the United States. The requirement of presence, implemented by Section 1611(f) and at issue here, is related to residence but does not supplant or displace proof on that subject. Rather, as we show in the main brief, the presence requirement reinforces the residence requirement and serves other purposes as well.

The independence of the two requirements is demonstrated by the fact that, once a prospective recipient of SSI benefits has established his United States residence to the Secretary's satisfaction, he is not required to reprove this aspect of eligibility each time he returns from traveling abroad for 30 or more consecutive days. Grace Aznavorian's SSI benefits were resumed in October 1974 without any new showing on her part that she intended to remain a United States resident. The fact that Aznavorian left the United States thus did not set up a presumption of any sort that she was no longer a resident of the United States.

Section 1611(f) means only that persons who are absent from the United States for extended periods do not receive benefits during that absence. As we have argued in our main brief (Br. 21-27), Section 1611(f) makes it *unnecessary* for the Secretary to determine whether residence has been abandoned during lengthy foreign trips and simultaneously helps advance the congressional purpose of providing financial assistance to those who actually need it to live in the United States. The "irrebuttable presumption" cases on which appellees rely therefore do not assist them.

2. Appellees' brief contains two errors concerning the practical effects of Section 1611(f) in particular situations. First, appellees state (Br. 8) that "[i]f a recipient makes a trip of 29 days, from January 31 to March 2, two full months of benefits are lost." This is not true. In such a situation, the recipient would not be outside the United States for 30 consecutive days and, accordingly, the 30-day rule contained in the second sentence of Section 1611(f) would not be activated. An otherwise eligible recipient traveling abroad during the period described by appellees would not receive SSI benefits for February but would receive them for March. (Of course, in a leap year, a trip that extends from January 31 to March 2 would entail 30 consecutive days outside the United States, and SSI benefits would therefore be suspended for both February and March.)

Appellees also state (Br. 51) that "[e]xcept during February, a person traveling abroad for any other full calendar month, will have a double penalty: he loses one month's benefits under the first sentence [of Section 1611(f)], and one more under the second." This assertion is accurate only when the SSI recipient returns to the United States in a month containing 30 rather than 31 days. Thus, if a person leaves the country on April 30 and returns on June 1, he can not receive SSI benefits for either May or June. But, if he leaves the country on June 30 and returns on August 1, he will lose benefits only for July.

3. Appellees repeatedly refer (Br. 6-7, 28-29, 40, 43) to the aborted foreign travel plans of Anna Tolstick and Betsabe Rivas, as if the statements contained in affidavits of these prospective intervenors were established as facts in the record. The district court denied Tolstick and Rivas leave to intervene (77-991 J.S. App. 10A-11A), because they were not injured by the application of Section 1611(f)

and therefore did not present a claim to the Secretary following a loss of benefits. The court made no findings with respect to Tolstick and Rivas, and the parties entered into no stipulation concerning the matters addressed in the affidavits of the two women. Accordingly, appellees' references to Tolstick and Rivas are mere allegations and should not be regarded as established facts.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

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